FILED BY CLERK
OCT 31 2007
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2007-0039
	)	DEPARTMENT B
	)	
IN RE JAMES S.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16245202

Honorable Ted B. Borek, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Scott Christensen — Tucson
Attorneys for State

Sanders & Sanders, P.C.
By Jennifer J. Sanders and Ken Sanders — Tucson
Attorneys for Minor

E C K E R S T R O M, Presiding Judge.

¶1 James S., born in January 1990, appeals from the juvenile court's order committing him to a level IV secure care facility of the Arizona Department of Juvenile Corrections (ADJC) for a period not to exceed his eighteenth birthday. James contends on appeal that the juvenile court failed to hold the disposition hearing within appropriate time limits, improperly denied his request to continue the disposition hearing, and fundamentally erred by committing him to ADJC.

¶2 A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile. *In re Maricopa County Juvenile Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995). We will not disturb a disposition order absent an abuse of the juvenile court's discretion. *In re Maricopa County Juvenile Action No. JV-512016*, 186 Ariz. 414, 418, 923 P.2d 880, 884 (App. 1996). In the analogous context of adult sentencing, an abuse of discretion occurs if the court acts arbitrarily or capriciously or fails to conduct an adequate investigation into the facts relevant to sentencing. *State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985). In a delinquency case, the juvenile court may also abuse its discretion by failing to consider the advisory guidelines established by the Arizona Supreme Court for the commitment of minors to ADJC. *See In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000). However, after considering the guidelines in combination with all information pertinent to disposition and the particular facts and circumstances of each case, the juvenile court is free to exercise its broad discretion in ordering the disposition it deems individually appropriate for a delinquent juvenile. *In re Niky R.*, 203 Ariz. 387, ¶ 19, 55 P.3d 81, 85 (App. 2002). The juvenile court did not abuse its discretion in this case.

¶3 James is a dependent child with a history of mental health issues. He was adjudicated delinquent on April 18, 2007, after he pled no contest to allegations contained in a February 2007 delinquency petition. The petition alleged one count of assault and two counts of disorderly conduct, all class one misdemeanors. James had previously admitted violating his probation as alleged in a January 2007 petition to revoke probation. James was

detained in custody at all times during the proceedings relevant to this appeal. The juvenile court ordered him committed to ADJC on May 23, 2007.

¶4 James first argues that the juvenile court abused its discretion by failing to hold the disposition hearing within thirty days of the adjudication. Rule 30(B)(1)(a), Ariz. R. P. Juv. Ct., provides that, when a juvenile is detained, a disposition "hearing shall be held within thirty (30) days of adjudication of delinquency." However, subsection (B)(1)(c) of the same rule allows the juvenile court to defer or continue the disposition hearing for good cause up to thirty days beyond the date originally set for the hearing without the juvenile's consent. In this case, the original date set for the disposition hearing was May 3, 2007. Although the juvenile court continued the hearing twice, it held the disposition hearing on May 23, 2007, within the time limits set by Rule 30(B)(1)(c).

¶5 James argues there was no good cause for the continuances. We review a juvenile court's discretionary decisions to determine if there is evidence to support them. *See Leslie C. v. Maricopa County Juvenile Court*, 193 Ariz. 134, 135, 971 P.2d 181, 182 (App. 1997); *cf. Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 15, 158 P.3d 225, 230 (App. 2007), *quoting Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 929 (App. 2005), *quoting Quigley v. Tucson City Court*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982) (reviewing finding of good cause for failure to appear for abuse of discretion and noting appellate court "generally will reverse only if the juvenile court's exercise of . . . discretion was '"manifestly unreasonable or exercised on untenable

grounds, or for untenable reasons"""). In this case, the record supports the juvenile court's good-cause determinations.

¶6 At the first disposition hearing, the juvenile probation officer informed the court that only two of the three possibly appropriate residential treatment facilities had yet interviewed James. The juvenile court was also informed that one of the facilities, Parc Place, had accepted James but did not have an opening for him before June 2007, and the child and family team (CFT) did not approve of that placement. The court continued the disposition hearing to allow the probation department time to investigate whether "an earlier placement" that would be beneficial to James might be available. Because the court was "very reluctant" to override the CFT's recommendation against Parc Place without additional information, the court also wanted to know the reasons for CFT's disapproval.

¶7 At the continued disposition hearing on May 11, the juvenile probation officer informed the court that he had learned the previous day that the third possible treatment facility had not accepted James to its program. Because the probation department's recommendation was then to be commitment to ADJC, the probation officer requested additional time to prepare a written disposition report, explaining that he had not had time to prepare the report because he had only learned the day before about the third treatment facility's decision. Although James offered to waive the required written report, the juvenile court stated it "need[ed] to see and have the recommendations spelled out." These circumstances provided ample justification for the juvenile court's good-cause findings. James's contention that "the only basis for the continuances was the negligence of the

probation officer" in failing to timely complete the disposition report is not supported by the record.

¶8 James also contends that the probation officer could not properly request a continuance under Rule 30(B)(1)(c) and that, because the probation officer when he requested the continuances did not inform the juvenile court of the impending expiration of the time limit for the disposition hearing, the requests did not comply with Rule 15 (C), Ariz. R. P. Juv. Ct. Although Rule 30(B)(1)(c) does not expressly provide that a juvenile probation officer may request a continuance, we find no abuse of discretion in the juvenile court's granting his request because the rule allows continuances upon "the court's own motion." Moreover, the court was obviously aware of the time limits imposed by the rule when it continued the hearing as it discussed them with counsel.[1]

¶9 Next, James argues the juvenile court erred in denying his request for a continuance of the May 23 disposition hearing. At that hearing, the probation officer informed the court that he had just received a letter from Parc Place rescinding its earlier

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[1]James argues in his reply brief that the juvenile court also failed to comply with Rule 15(C), Ariz. R. P. Juv. Ct., because it did not expressly find good cause for the second continuance and, although it "uttered the phrase 'good cause' [at the May 3, 2007, disposition hearing,] it made no specific findings." Generally an appellant may not raise issues for the first time in a reply brief. *See State v. Aleman*, 210 Ariz. 232, ¶ 9, 109 P.3d 571, 575 (App. 2005); *see also* Ariz. R. Civ. App. P. 13(a)(5), (6) (applicable to appeals from juvenile court pursuant to Rule 91(A), Ariz. R. P. Juv. Ct.). However, the juvenile court's reasons for granting the continuances are clearly stated on the record, and although the court did not use the words "good cause" for the second continuance, a finding of good cause was implicit. *Cf. Allen v. Chon-Lopez*, 214 Ariz. 361, ¶ 18, 153 P.3d 382, 387 (App. 2007) ("[A]ppellate courts will infer a trial court has made any findings supportable by the record that are necessary to sustain its judgment.).

acceptance of James into its program. James requested a continuance to allow him to elicit testimony from a representative of Parc Place. He asserts that "[t]he requested continuance was premised upon the probation officer's testimony that he had contacted Parc Place and prompted it to reverse its" initial acceptance. The probation officer actually testified that he had sent "a packet on James'[s] referral history" to Parc Place. Although the officer "assumed" that Parc Place might have reversed its decision to accept James based on that information, he was "not really sure."[2]

¶10 James argues that good cause existed for the continuance he requested because his "counsel required additional time to investigate the probation officer's deliberate disruption of [his] acceptance to Parc Place," and he claims the "interests of justice" required he be able to "rebut the probation officer's eleventh hour surprise." However, we find no abuse of discretion in the juvenile court's denial of James's request.

¶11 Ultimately, the reasons Parc Place rejected James were not material to the juvenile court's disposition decision. There is no indication that Parc Place could have been convinced to restore its original decision to accept James or that the court would have placed James there even if he had been accepted. In the disposition report, the probation officer explained that James's treatment team felt Parc Place was "not a suitable placement based on [James's] mental health needs." The report also stated:

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[2]The letter itself is not in the record before this court. Discussion between counsel and the juvenile court suggests the letter stated that Parc Place had rescinded its acceptance of James based on information it had received about him but did not specify that information.

> Parc Place is a Level I treatment facility mainly contracted to accept juveniles who have a substance abuse issue[]. James has a history of walking away from placements[,] and at this time Parc Place is not a locked facility. If James chooses, he can simply walk away from treatment. Based on his history, James is most likely to do this. James poses a serious threat to the safety and well being of other patients in this facility. He has a history of becoming verbally and physically aggressive toward staff and patients.

The juvenile court had previously expressed great reluctance to place James in a facility that the CFT did not recommend, and at the May 23 hearing, it found that "the public's safety require[d]" James be committed to ADJC. In short, the trial court permissibly found no good cause existed for the requested continuance because the information James hoped to develop was immaterial to the juvenile court's disposition decision.

¶12 Finally, James argues that the juvenile court committed "fundamental legal error" by committing him to ADJC because he is a dependent child.[3] James relies on A.R.S. § 8-342(A), which states: "A child under the age of eight years shall not be committed to the department of juvenile corrections, nor shall a dependent or incorrigible child be awarded to the department of juvenile corrections." However, A.R.S. § 8-341(A)(1)(e) specifically provides that a delinquent child may be awarded to ADJC.

¶13 "Where two statutes dealing with the same subject are seemingly in conflict, the more specific statute controls." *Midland Risk Mgmt. Co. v. Watford*, 179 Ariz. 168,

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[3]James must show fundamental error because he failed to object to the juvenile court's disposition order below. *See In re Natalie Z.*, 214 Ariz. 452, ¶ 7, 153 P.3d 1081, 1084 (App. 2007); *see also State v. Henderson*, 210 Ariz. 561, 567, ¶¶ 19, 23, 115 P.3d 601, 607-08 (2005) (issues not raised in trial court reviewed for fundamental error, but to show fundamental error, appellant must first show error).

171, 876 P.2d 1203, 1206 (App. 1994). In this case, the juvenile court was ordering the disposition for James's delinquency adjudication, not for his adjudication of dependency. Therefore, the juvenile court did not err in applying § 8-341(A) in this case. Moreover, it "is a fundamental rule of statutory construction that courts will construe conflicting statutes in harmony when possible." *Id*. Sections 8-341(A) and 8-342(A) can easily be harmonized by interpreting 8-342(A) to bar commitment of a dependent child over the age of eight to ADJC if that child is only dependent and has not also been adjudicated delinquent. Any other interpretation would be illogical. *See Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, ¶ 11, 117 P.3d 795, 798 (App. 2005) (we will not interpret statutes to create absurd result).

¶14 The juvenile court's orders of adjudication and disposition are affirmed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge